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14 UNITED STATES BANKRUPTCY COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 Santa Rosa Division
17

14 In re	)	Case No. 11-13214-AJ 7
15 Dean Gregory Asimos,	)	Chapter 7
16	)	R.S. No. RAC-4
17	)	MOTION FOR RELIEF FROM
18	)	THE AUTOMATIC STAY OF
19 Debtor.	)	MERCEDES-BENZ FINANCIAL
	)	SERVICES
	)	DATE: January 9, 2014
	)	TIME: 9:00 a.m.
	)	PLACE: 99 South E Street
	)	Santa Rosa, CA 95404
	)	Hon. Alan Jaroslovsky

22
23 TO THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES
24 BANKRUPTCY JUDGE, RESPONDENTS AND ALL OTHER INTERESTED
25 PARTIES:

26 Movant Mercedes-Benz Financial Services USA LLC, formerly known
27 as DCFS USA LLC ("MBFS") hereby moves this Court for relief from the automatic
28 stay pursuant to 11 U.S.C. section 362, to allow it to proceed with its rights and

1 remedies as set forth in the Promissory Note and Security Agreement for the purchase
2 of a 2006 Mercedes-Benz S430V motor vehicle. MBFS submits the Declaration of
3 Kim Nguyen, its Exhibit List and the Relief from Stay Cover Sheet in support
4 thereof.

5 1. On or about August 23, 2010, debtor Dean Gregory Asimos (“Debtor”)
6 executed and delivered to MBFS, a Promissory Note and Security Agreement
7 (“Note”) to finance the purchase of a 2006 Mercedes-Benz S430V motor vehicle,
8 Serial No. WDBNG70J66A465211 (“Vehicle”). The Debtor agreed to pay for the
9 total sum of \$44,259.38, in 60 equal monthly payments of \$900.39 each beginning
10 February 15, 2009. A copy of the Note is marked as **Exhibit “1”** and attached to the
11 Declaration of Kim Nguyen filed and served herewith.

12 2. MBFS thereafter perfected its lienholder interest in the Vehicle by
13 obtaining a Certificate of Title from the California Department of Motor Vehicles. A
14 copy of the title is marked as **Exhibit “2”** and attached to the Declaration of Kim
15 Nguyen filed and served herewith.

16 3. On or about November 15, 2009, the Debtor defaulted under the terms
17 of the Note as set forth in the Declaration of Kim Nguyen. Due to the payment
18 delinquency, the Debtor’s account was charged-off on March 29, 2010. Following
19 the charge-off of Debtor’s account and the Debtor’s bankruptcy filing on August 29,
20 2011, the Debtor’s plan was confirmed by order of this Court on March 2, 2012.
21 Pursuant to the confirmed plan, MBFS received a total of 12 payments totaling
22 \$4,754.00 from the trustee. The last trustee payment of \$237.70, was received by
23 MBFS on May 7, 2013. A copy of the payment history is marked as **Exhibit “3”** and
24 attached to the Declaration of Kim Nguyen filed and served herewith.

25 4. As set forth in the Declaration of Kim Nguyen, the outstanding balance
26 on the account is \$47,164.49, as of December 14, 2013, plus attorneys’ fees and
27 costs.

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1 5. The estimated value of the Vehicle according to KBB.com (Kelley Blue
2 Book) is \$14,316. A copy of the Kelley Blue Book evaluation is marked as **Exhibit**
3 **“4”** and attached to the Declaration of Kim Nguyen filed and served herewith.

4 6. Based on the estimated value of the Vehicle of \$14,316, and the total
5 indebtedness owing to MBFS in the sum of \$47,164.49, as set forth in the Declaration
6 of Kim Nguyen, the Debtor has no equity in the Vehicle for the benefit of the Debtor
7 or the bankruptcy estate.

8 7. Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant MBFS the
9 requested relief from stay as follows:

10 (1) MBFS’ interest in the Vehicle is not adequately protected.

11 (a) MBFS’ interest in the Vehicle is not protected by an adequate
12 equity cushion.

13 (b) The fair market value of the Vehicle is declining and payments
14 are not being made to MBFS sufficient to protect MBFS’
15 interest against that decline.

16 (2) Pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the
17 Vehicle; and pursuant to § 362(d)(2)(B), the Vehicle is not necessary
18 for an effective reorganization.

19 8. From the time the Debtor filed his Chapter 13 petition on August 29,
20 2011, MBFS received a total of 12 trustee payments totaling \$4,754. However, the
21 account remains unpaid in the total sum of \$47,164.49 and the account is past-due for
22 payments commencing November 15, 2009, since the account was charged-off on
23 March 29, 2010. Lastly, the Debtor has no equity in the Vehicle and MBFS is not
24 adequately protected.

25 9. Based upon the foregoing and the Declaration of Kim Nguyen filed and
26 served herewith, MBFS respectfully requests that this Honorable Court enter its order
27 as follows:

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1 (a) Terminate the automatic stay to allow MBFS the right to enforce its
2 Note in a manner permitted by law;

3 (b) That the 14-day stay prescribed by Bankruptcy Rule 4001(a)(3) be
4 waived;

5 (c) That this order shall be binding and effective despite any
6 conversion of this bankruptcy case to a case under any other chapter of Title 11 of the
7 United States Code;

8 (d) For such other and further relief as the Court deems just and proper.

9
10 Dated: 12/10, 2013

CALEY & ASSOCIATES
A Professional Corporation

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